

Policy ~~3122~~ 501 – Nondiscrimination and Equal Employment Opportunity

Revised policy and repeal of Policy 3122.02 (Nondiscrimination Based on Genetic Information of the Employee), Policy 3123 (Section 504/ADA – Prohibition Against Disability Discrimination in Employment), Policy 3362 (Anti-Harassment and Violence), Policy 3362.02 (Anti-Harassment of Persons with a Disability), Policy 4122 (Nondiscrimination and Equal Employment Opportunity), Policy 4122.02 (Nondiscrimination Based on Genetic Information of the Employee), Policy 4123 (Section 504/ADA – Prohibition Against Disability Discrimination in Employment), Policy 4362 (Anti-Harassment and Violence), Policy 4362.02 (Anti-Harassment of Persons with a Disability) effective upon passage

1st reading May 23, 2019

2nd reading

3rd reading

Statutory authority (none)

Administrative Guidelines

(none)

The Board of Education does not discriminate in the employment of administrative staff on the basis of the Protected Classes of race, religion, color, national origin, ethnicity, ancestry, sex (including transgender status, change of sex or gender identity), pregnancy, age, blindness, disability, veteran status, military status, genetic information, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability or any other characteristic protected by law in its employment practices. (~~See West Virginia State Board of Education policy 4373~~)

County Compliance Officers

The Board designates the following individuals to serve as the County's "Compliance Officers" (hereinafter referred to as the "COs") the Superintendent and Director of Student Support Services.

Dr. William Chapman Mrs. Melissa O'Brien

(Name) (Name)

Personnel Director Special Education Director

(County Title) (County Title)

(304) 927-6406 (304) 927-6411

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The names, titles, and contact information of these individuals will be published annually in the staff handbooks and/or on the County's web site.

The COs are responsible for coordinating the County's efforts to comply with applicable Federal and State laws and regulations, including the County's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination, retaliation, or denial of equal access. The COs shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973, (as amended), Genetic Information Nondiscrimination Act (GINA) and the Age Discrimination in Employment Act of 1975 (ADEA) is provided to staff members and the general public. A copy of each of the Acts and regulations on which this notice is based may be found in the CO's office.

Reports and Complaints of Unlawful Discrimination and Retaliation

Employees are encouraged to promptly report incidents of unlawful discrimination and/or retaliation to an administrator, supervisor, or other County-level official so that the Board may address the conduct. Any administrator, supervisor, or other County-level employee or official who receives such a complaint shall file it with the CO at his/her first opportunity, but no later than two (2) school days.

Employees who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's employment. While there are no time limits for initiating complaints under this policy, individuals should make every effort to file a complaint as soon as possible after the conduct occurs while the facts are known and potential witnesses are available.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept complaints of unlawful discrimination/retaliation directly from any member of the County school community or a visitor to the County schools, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint, either directly or through a school building administrator, a CO will begin either an informal or formal process (depending on the request of the person alleging the discrimination/retaliation or the nature of the alleged discrimination/retaliation), or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy to any person who files a complaint. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the County community must report incidents of discrimination/retaliation that are reported to them to the CO at his/her first opportunity, but no later than two (2) business days of learning of the incident/conduct.

Any Board employee who directly observes unlawful discrimination/retaliation is obligated, in accordance with this policy, to report such observations to one of the COs within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the misconduct. Thereafter, the CO or designee must contact the employee within two (2) business days to advise him/her of the Board's intent to investigate the wrongdoing.

Investigation and Complaint Procedure ~~(See Form 3122 F2)~~

Any employee who believes that s/he has been subjected to unlawful discrimination or retaliation may seek resolution of his/her complaint through the procedures described below. The complaint procedures involve an investigation of the individual's claims and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights or Equal Employment Opportunity Commission ("EEOC").

Informal Complaint Procedure

The goal of the informal complaint procedure is to stop quickly inappropriate behavior and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for an employee who believes s/he has been unlawfully discriminated or retaliated against.

This informal procedure is not required as a precursor to the filing of a formal complaint. The informal process is only available in those circumstances where the parties (the alleged target of the discrimination/retaliation and individual(s) alleged to have engaged in the discrimination) agree to participate in it.

Employees who believe that they have been unlawfully discriminated/retaliated against may proceed immediately to the formal complaint process and individuals who seek resolution through the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

All complaints involving a County employee or any other adult member of the County school community against a student will be formally investigated.

As an initial course of action, if an individual feels that s/he is being unlawfully discriminated/retaliated against and s/he is able and feels safe doing so, the individual should tell or otherwise inform the person who engaged in the allegedly discriminatory/retaliatory conduct that it is inappropriate and must stop. The complaining individual should address the alleged misconduct as soon after it occurs as possible. The COs are available to support and counsel individuals when taking this initial step or to intervene on behalf of the individual if requested to do so. An individual who is uncomfortable or unwilling to inform the person who allegedly engaged in the unlawful conduct of his/her concerns is not prohibited from otherwise filing an informal or a formal complaint. In addition, with regard to certain types of unlawful discrimination, such as sexual discrimination, the CO may advise against the use of the informal complaint process.

An individual who believes s/he has been unlawfully discriminated/retaliated against may make an informal complaint, either orally or in writing: (1) to a building administrator; (2) directly to one of the COs; and/or (3) to the Superintendent or other County-level employee.

All informal complaints must be reported to one of the COs who will either facilitate an informal resolution as described below, or appoint another individual to facilitate an informal resolution.

The County's informal complaint procedure is designed to provide employees who believe they are being unlawfully discriminated/retaliated against with a range of options aimed at bringing about a prompt resolution of their concerns. Depending upon the nature of the complaint and the wishes of the individual claiming unlawful discrimination/retaliation, informal resolution may involve, but not be limited to, one or more of the following:

- A. Advising the individual about how to communicate his/her concerns to the person who allegedly engaged in the discriminatory/retaliatory behavior.
- B. Distributing a copy of ~~Policy 3122—Nondiscrimination and Equal Employment Opportunity~~ this policy as a reminder to the individuals in the school building or office where the individual whose behavior is being questioned works.
- C. If both parties agree, the CO may arrange and facilitate a meeting between the individual claiming discrimination/retaliation and the individual accused of engaging in the misconduct to work out a mutual resolution.

While there are no set time limits within which an informal complaint must be resolved, the CO or designee will exercise his/her authority to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint. Parties who are dissatisfied with the results of the informal complaint process may proceed to file a formal complaint. And, as stated above, parties may request that the informal process be terminated at any time to move to the formal complaint process.

All materials generated as part of the informal complaint process will be retained by the COs in accordance with the Board's records retention policy. (~~See Policy 8310~~)

Formal Complaint Procedure

If a complaint is not resolved through the informal complaint process, if one of the parties requested that the informal complaint process be terminated to move to the formal complaint process, or if the individual elects to file a formal complaint initially, the formal complaint process shall be implemented.

An individual who believes s/he has been subjected to unlawful discrimination/retaliation (hereinafter referred to as the "Complainant"), may file a formal complaint, either orally or in writing, with a principal, the CO, Superintendent, or other County-level employee. Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other County-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than two (2) business days.

Throughout the course of the process, the CO should keep the parties informed of the status of the investigation and the decision-making process.

All formal complaints must include the following information to the extent it is available: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based; a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a formal complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the person who allegedly engaged in the misconduct.

Pursuant to West Virginia State Board of Education Policy 4373, upon receiving a formal complaint, the CO, in consultation with the Superintendent will take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.

In making such a determination, the CO should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deems appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO or designee will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation.

Simultaneously, the CO will inform the individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent"), that a complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including ~~Policy 3122 – Nondiscrimination and Equal Employment Opportunity~~ this policy. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the CO or a designee will attempt to complete an investigation into the allegations of discrimination/retaliation within fifteen (15) business days of receiving the formal complaint. The investigation will include:

- A. interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

At the conclusion of the investigation, the CO or the designee shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard will be used.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or the designee, the Superintendent must either issue a final decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final decision will be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, s/he must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate and effective, and tailored to the specific situation.

A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of his/her receipt of the Superintendent's final decision.

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within

twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting. The decision of the Board will be final. (~~See West Virginia State Board of Education policy 7211 — Appeals Procedure for Citizens.~~)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the employee alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The Complainant may be represented, at his/her own cost, at any of the above-described meetings/hearings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

The County will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s).

During the course of a formal investigation, the CO or designee will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that s/he learns and/or provides during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the Board's records retention policy.

Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful discrimination by taking appropriate action reasonably calculated to stop and prevent further misconduct. While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee. All disciplinary action will be taken in accordance with applicable State law and the terms of the relevant collective bargaining agreement(s). When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter. In those cases where unlawful discrimination/retaliation is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against an employee, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its recurrence, and remedy its effect.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination/retaliation, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted, or participated in any

manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

Education and Training

In support of this policy, the Board promotes preventative educational measures to create greater awareness of unlawful discriminatory practices. The Superintendent shall provide appropriate information to all members of the County community related to the implementation of this policy and shall provide training for County students and staff where appropriate. All training, as well as all information provided regarding the Board's policy and discrimination in general, will be age and content appropriate.

Nondiscrimination Based on Genetic Information of the Employee

The Board of Education prohibits discrimination on the basis of genetic information in all aspects of employment, including hiring, firing, compensation, job assignments, promotions, layoffs, training, fringe benefits, or any other terms, conditions, or privileges of employment. The Board also does not limit, segregate, or classify employees in any way that would deprive or tend to deprive them of employment opportunities or otherwise adversely affect the status of an employee as an employee, based on genetic information. Harassment of a person because of his/her genetic information is also prohibited. Likewise, retaliation against an applicant or employee for engaging in protected activity is prohibited.

The Board shall not discriminate against any employee or applicant because such employee or applicant has opposed any act or practice prohibited by this policy or because such employee or applicant made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy.

In accordance with the Genetic Information Nondiscrimination Act (GINA), the Board shall not request, require or purchase genetic information of employees, their family members or applicants for employment. Further, in compliance with this Act, employees are directed not to provide any genetic information, including the individual's family medical history, in response to necessary requests for medical information, with the exception that family medical history may be acquired as part of the certification process for FMLA leave, when an employee is asking for leave to care for an immediate family member with a serious health condition. Applicants for employment are directed not to provide any genetic information, including the individual's family medical history, in response to requests for medical information as part of the County's application process.

The County recognizes that genetic information may be acquired through commercially and publicly available documents like newspapers, books, magazines, periodicals, television shows or the Internet. The County prohibits, however, its employees from searching such sources with the intent of finding or obtaining genetic information, or accessing sources from which they are likely to acquire genetic information.

"Genetic information," as defined by GINA, means information about: (a) an individual's genetic tests; (b) the genetic tests of that individual's family members; (c) the manifestation of disease or disorder in family members of the individual (i.e., family medical history); (d) an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or (e) the genetic information of a fetus carried by an individual or a pregnant woman who is a family member of the individual and the genetic information of an embryo legally held by an individual or family member using assistive reproductive technology.

If the County either legally and/or inadvertently receives genetic information about an employee or applicant for employment from the employee, applicant for employment or a medical provider it shall be treated as a confidential medical record in accordance with law.

The Superintendent shall appoint a compliance officer who shall be responsible for overseeing the County's compliance with Federal regulations and promptly dealing with any inquiries or complaints. S/He shall also verify that proper notice of nondiscrimination for Title II of the Genetic Information Nondiscrimination Act of 2008 is provided to staff members, and that all County requests for health-related information (e.g., to support an employee's request for reasonable accommodation under the ADA or a request for sick leave) is accompanied by a written warning that directs the employee or health care provider not to collect or provide genetic information. The warning shall read as follows:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II, including the Board of Education, from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by law. To comply with this law, do not provide any genetic information when responding to this request for medical information (unless the request pertains to a request for FMLA leave for purposes of caring for an immediate family member with a serious health condition). "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic test, the fact that an individual or an individual's family member sought or received genetic services or participated in clinical research that includes genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Section 504 / ADA Prohibition Against Disability Discrimination in Employment

The Board of Education prohibits discrimination against any employee or applicant based upon his/her disability. As such, the Board will not engage in employment practices or adopt policies that discriminate on the basis of disability, or otherwise discriminate against qualified individuals with disabilities in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions and privileges of employment. The Board further will not limit, segregate or classify applicants or employees in any way that adversely affects their opportunities or status because of disability. Additionally, the Board will not participate in any contractual or other relationships that have the effect of subjecting qualified individuals with disabilities who are applicants or employees to discrimination on the basis of disability.

"An individual with a disability" means a person who has, had a record of, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities. Major life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, use of assistive technology, reasonable accommodations or "auxiliary aides or services," learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy.

A qualified person with a disability means the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of the job in question.

The Board will provide a reasonable accommodation to a qualified individual who has an actual disability or who has a record of a disability, unless the accommodation would impose an undue hardship on the operation of the County's program and/or activities. A reasonable accommodation is not required for an individual who is merely regarded as having a disability.

~~County Compliance Officer(s)~~

~~The Board designates the following individual(s) to serve as the County's 504 Compliance Officer(s)/ADA Coordinator(s) (hereinafter referred to as the "CO(s)").~~

~~Dr. William Chapman Mrs. Melissa O'Brien~~

~~(Name) (Name)~~

~~Personnel Director Special Education Director~~

~~(County Title) (County Title)~~

~~(304) 927-6406 (304) 927-6411~~

~~(Telephone Number) (Telephone Number)~~

~~813 Capitol St. 813 Capitol St.~~

~~Spencer, WV 25276 Spencer, WV 25276~~

~~(Office Address) (Office Address)~~

~~wchapman@k12.wv.us mobrien@k12.wv.us~~

~~(E-mail Address) (E-mail Address)~~

~~The name(s), title(s), and contact information of this/these individual(s) will be published annually in the staff handbooks and/or on the County's web site.~~

The CO(s) are responsible for coordinating the County's efforts to comply with and fulfill its responsibilities under Section 504 and Title II of the Americans with Disabilities Act, as amended ("ADA"). A copy of Section 504 and the ADA, including copies of their implementing regulations, may be obtained from the CO.

The CO(s) will oversee the investigation of any complaints of discrimination based on disability, which may be filed pursuant to the Board's adopted internal complaint procedure, and will attempt to resolve such complaints. The Board will provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA. (See complaint procedure below.)

Training

The CO(s) will also oversee the training of employees in the County so that all employees understand their rights and responsibilities under Section 504 and the ADA, and are informed of the Board's policies, administrative guidelines and practices with respect to fully implementing and complying with the requirements of Section 504/ADA.

The Board will provide in-service training and consultation to staff responsible for the education of persons with disabilities, as necessary and appropriate.

Facilities

No qualified person with a disability will, because the County's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504/ADA applies.

For facilities constructed or altered after June 3, 1977, the County will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the County is committed to operating its programs and activities so that they are readily accessible to persons with disabilities.

Notice

Notice of the Board's policy on nondiscrimination in employment practices and the identity of the CO(s) will be posted throughout the County, and published in the County's recruitment statements or general information publications.

Complaint Procedures

If a person believes that s/he has been discriminated against on the basis of his/her disability, the person may utilize the following complaint procedure as a means of reaching, at the lowest possible administrative level, a prompt and equitable resolution of the matter.

In accordance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504"), employees will be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation or misapplication of Section 504. In addition, employees will be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights.

Internal complaints must be put in writing and must identify the specific circumstances or areas of dispute that have given rise to the complaint, and offer possible solutions to the dispute. The complaint must be filed with a CO within the time limits specified below. The CO is available to assist individuals in filing a complaint.

Internal Complaint Procedure

The following internal complaint procedure is available to employees for the prompt and equitable resolution of complaints alleging discrimination based upon disability. This complaint procedure is not available to unsuccessful applicants. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the U.S. Department of Education's Office for Civil Rights.

- A. An employee with a complaint based on alleged discrimination on the basis of disability may first discuss the problem with the CO.
- B. If the informal discussion does not resolve the matter, or if the employee skips Step A, the individual may file a formal written complaint with the CO. The written complaint must contain the name and address of the individual or representative filing the complaint, be signed by the complainant or someone authorized to sign for the complainant, describe the alleged discriminatory action in sufficient detail to inform the CO of the nature and date of the alleged violation, and propose a resolution. The complaint must be filed within thirty (30) calendar days of the circumstances or event that gives rise to the complaint, unless the time for filing is extended by the CO for good cause.
- C. The CO will conduct an independent investigation of the matter (which may or may not include a hearing). This complaint procedure contemplates informal, but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to present witnesses and other evidence relevant to the complaint.

The CO will provide the complainant with a written disposition of the complaint within ten (10) workdays. If no decision is rendered within ten (10) workdays, or the decision is unsatisfactory in the opinion of the complainant, the employee may file, in writing, an appeal with the Superintendent. The CO shall maintain the County's files and records relating to the complaint.

- D. The Superintendent will, within ten (10) workdays of receiving the written appeal, conduct a hearing with all parties involved in an attempt to resolve the complaint. The Superintendent will render his/her decision within ten (10) workdays of the hearing.
- E. The employee may be represented, at his/her own cost, at any of the above-described meetings/hearings.
- F. The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

If it is determined that the complainant was subjected to unlawful discrimination, the CO must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate and effective, and tailored to the specific situation.

OCR Complaint

At any time, if an employee believes that s/he has been subjected to discrimination based upon his/her disability in violation of Section 504 or the ADA, the individual may file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). The OCR can be reached at:

U.S. Department of Education

Office for Civil Rights

Philadelphia

150 S. Independence Mall West,

Suite 372, Public Ledge Building

Philadelphia, PA 19016-9111

Main Line: (800) 368-1019

Fax: (215) 861-4431

TDD: (800) 537- 7697

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination, or participates as a witness in an investigation, is prohibited. Specifically, the Board will not take adverse employment action against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by Section 504 or the ADA, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

~~29 C.F.R. Part 1630~~

~~29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended~~

~~34 C.F.R. Part 104~~

~~42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended~~

Anti-Harassment and Violence

General Statement

Racial, sexual, and religious/ethnic harassment is a form of discrimination which violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., and WV Code 5-11-1, et seq., the West Virginia Human Rights Act.

It is the policy of the Board of Education to maintain an education and work environment that is free from all forms of unlawful harassment and violence.

This policy applies to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by the Board of Education or in any other facility being used by the Board.

The Board will vigorously enforce its prohibition against discriminatory harassment based on race, color, national origin, sex (including transgender status, change of sex, or gender identity), disability, age, blindness, creed or religion, ancestry, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability, or genetic information (collectively, "Protected Classes") that are protected by Federal civil rights laws (hereinafter referred to as "unlawful harassment"), and encourages those within the County School community as well as third parties, who feel aggrieved to seek assistance to rectify such problems. The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment, prevent its reoccurrence, and remedy its effects. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action. (See West Virginia State Board of Education policy 4373)

For purposes of this policy, "County School community" means students, administrators, and professional and classified staff, as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on County School property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the County School community at school-related events/activities (whether on or off County School property).

The Board will act promptly and confidentially to investigate all harassment and violence complaints, formal or informal, verbal or written, and will take appropriate disciplinary action based upon the results of the investigation.

Other Violations of the Anti-Harassment Policy

The Board will also take immediate steps to impose disciplinary action on individuals engaging in any of the following prohibited acts:

- A. Retaliating against a person who has made a report or filed a complaint alleging unlawful harassment, or who has participated as a witness in a harassment investigation.
- B. Filing a malicious or knowingly false report or complaint of unlawful harassment.
- C. Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating unlawful harassment charges comprises part of one's

supervisory duties.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01 - Bullying addresses those instances of bullying and harassment which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless, behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops, and through school computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and, when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission, or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager, or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

Definitions

- A. Sexual harassment – Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:
1. submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education; or
 2. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
 3. creating an intimidating, hostile or offensive or educational environment.

Sexual harassment may include, but is not limited to:

1. verbal or written harassment of a sexual nature or abuse;
2. pressure for sexual activity;
3. inappropriate or unwelcome patting, pinching, or physical conduct;
4. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;
5. unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;
6. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities;
7. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;
8. verbal abuse of a sexual nature, without regard to whether the verbal abuse specifically refers to sexual characteristics at whom the verbal abuse is directed;
9. verbal or written comments about an individual's body;
10. sexually degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
11. the display, use or dissemination of sexually suggestive gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials and materials displayed by electronic means, sex based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
12. nonsexual conduct, including words or actions, directed toward a person because of their gender that tends to ridicule, criticize, discriminate, or otherwise makes it more difficult for that person to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of sexual harassment. Any sexual harassment, as defined, when perpetrated on any student, volunteer, third party or

employee by any student, volunteer, third party or employee will be treated as sexual harassment under this policy.

NOTE: Sexual conduct/relationships with students by County employees or any other adult member of the County community is prohibited, and any teacher, administrator, coach, or other school authority who engages in sexual conduct with a student may also be guilty of the criminal charge of "sexual abuse or sexual assault as set forth in Article 8B, Chapter 61 of the West Virginia Code. The issue of consent may be irrelevant in regard to such criminal charge. In addition, under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the Board shall comply with the provisions of law for reporting such abuse.

B. Racial Harassment – Racial harassment consists of physical, verbal, or written conduct relating to an individual's race when the conduct:

1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
3. otherwise adversely affects an individual's employment or academic opportunities;
4. racial harassment includes racially degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
5. the display, use, or dissemination of racially motivated gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials displayed by electronic means;
6. race based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
7. unwelcome behavior, verbal or written words or symbols, directed at an individual because of race;
8. conduct, including word(s) or actions, directed toward a person because of their race that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of racial harassment. Any racial harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as racial harassment under this policy.

C. Religious/Ethnic Harassment – Religious/ethnic harassment consists of physical, verbal or written conduct which is related to an individual's religion or ethnic background when the conduct:

1. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
3. otherwise adversely affects an individual's employment or academic opportunities;
4. religious/ethnic degrading word(s) or actions used to intimidate, describe an individual or refer to some aspect of the individual's behavior, appearance, attitude or conduct;
5. the display, use or dissemination of degrading religious/ethnic suggestive gestures, objects, pictures, and/or jokes by any means including, but not limited to, printed materials and materials displayed by electronic means;
6. religious/ethnic based labeling or stereotyping with respect to mental, physical or other abilities, talents, occupational or life goals, etc.;
7. conduct, including word(s) or actions, directed toward a person because of their religion or ethnicity that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of religious/ethnic harassment. Any religious/ethnic harassment, as defined, when perpetrated on any student, volunteer,

third party or employee by any student, volunteer, third party or employee will be treated as religious/ethnic harassment under this policy.

- D. Sexual Violence – Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another’s intimate parts or forcing a person to touch any person’s intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.

Sexual violence may include, but is not limited to:

1. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
 2. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
 3. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
 4. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
 5. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.
- E. Racial Violence - Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.
- F. Religious/Ethnic Violence - Religious/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or ethnicity.
- G. Assault - Assault is defined as an act done with intent to cause fear in another of immediate bodily harm or death; or the threat to do bodily harm to another with present ability to carry out the threat.

Reports and Complaints of Harassing Conduct

Members of the County School community, which includes all staff, and third parties are encouraged to promptly report incidents of harassing conduct to an administrator, supervisor or other County School official so that the Board may address the conduct before it becomes severe, pervasive, or persistent.

Members of the County School community or third parties who believe they have been unlawfully harassed by another member of the County School community or a third party are entitled to utilize the Board's complaint process that is set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's employment unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

If, during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01 – Bullying, the principal believes that the reported misconduct may have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the principal shall report the act of bullying, aggressive behavior and/or harassment to one of the Anti-Harassment Compliance Officers who shall investigate the allegation in accordance with this policy. While the Compliance Officer investigates the allegation, the principal shall suspend his/her Policy 5517.01 investigation to await the Compliance Officer's written report. The Compliance Officer shall keep the principal informed of the status of the Policy 3362 investigation and provide him/her with a copy of the resulting written report.

Reporting procedures are as follows:

- A. Any employee who believes s/he has been the victim of harassment prohibited under this policy is encouraged to report the alleged harassment to the appropriate school official as identified in D below.
- B. Teachers, administrators, and other school officials who have or receive notice that an employee has or may have been the victim of harassment prohibited under this policy shall immediately report the alleged harassment to

the appropriate school official as defined in D below.

- C. Any other person with knowledge or belief that an employee has or may have been the victim of harassment prohibited by this policy shall be encouraged to immediately report the alleged acts to an appropriate school official as identified in D below.
- D. Appropriate school officials are as follows:
 - 1. Any complaint under this policy shall be reported to the County's Compliance Officer unless the complaint is regarding the Compliance Officer. In such cases, the complaints shall be reported to the Superintendent, who shall assume the role of the County School Compliance Officer for such complaints.
 - 2. Any complaint under this policy regarding the Superintendent or Board Member that is received by the County School Compliance Officer shall be referred to the School Board's legal counsel, who shall assume the role of the County School Compliance Officer for such complaints.
 - 3. Any complaint under this policy regarding the principal, who serves as the Building Compliance Officer, shall be reported to the County's Compliance Officer, and the County Compliance Officer shall conduct the investigation.
- E. The reporting party or complainant shall be encouraged to use a report form available from the principal of each building or available from the County School office, but oral reports shall be considered complaints as well. Use of formal reporting forms shall not be mandated. However, all oral complaints shall be reduced to writing. Further, nothing in this policy shall prevent any person from reporting harassment directly to the Superintendent.
- F. To provide individuals with options for reporting harassment to an individual of the gender with which they feel most comfortable, the County School shall designate both a male and a female County School Compliance Officer.
- G. The investigation should be conducted by the CO or by the Superintendent within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.
- H. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary.

Anti-Harassment Compliance Officers

The Board designates ~~the following individuals~~ the Superintendent and Director of Student Support Services to serve as "Anti-Harassment Compliance Officers" for the County School. They are hereinafter referred to as the "COs."

~~Dr. William Chapman~~ _____ ~~Mrs. Melissa O'Brien~~

~~(Name)~~ _____ ~~(Name)~~

~~Personnel Director~~ _____ ~~Special Education Director~~

~~(County Title)~~ _____ ~~(County Title)~~

~~(304) 927-6406~~ _____ ~~(304) 927-6411~~

~~(Telephone Number)~~ _____ ~~(Telephone Number)~~

~~813 Capitol St.~~ _____ ~~813 Capitol St.~~

~~Spencer, WV 25276~~ _____ ~~Spencer, WV 25276~~

~~(Office Address)~~ _____ ~~(Office Address)~~

~~wchapman@k12.wv.us~~ _____ ~~mobrien@k12.wv.us~~

~~(E-mail Address)~~ _____ ~~(E-mail Address)~~

In Each School Building. The building principal is the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence at the building level. Upon receipt of a report of student conduct, the principal must notify the CO promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report will be forwarded to the CO and to the Superintendent.

The names, titles, and contact information of these individuals will be published annually in the parent and staff handbooks and/or on the County School's web site.

The name of the CO, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.

The CO(s) will be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the County School community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

COs shall accept complaints of unlawful harassment directly from any member of the County School community or a visitor to the County School, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint either directly or through a school building administrator, a CO will begin either an informal or formal process (depending on the request of the person alleging the harassment or the nature of the alleged harassment), or the CO will designate a specific individual to conduct such a process. In the case of a complaint, the CO will prepare recommendations for the Superintendent or will oversee the preparation of such recommendations by a designee. All members of the County School community must report incidents of harassment that are reported to them to the CO at his/her first opportunity, but no later than two (2) business days of learning of the incident.

All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must report the incident to either the building principal or the County School's Anti-Harassment Compliance Officer within twenty-four (24) hours of observing the incident. Additionally, any Board employee who observes an act of unlawful harassment is expected to intervene to stop the harassment, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the harassment.

Thereafter, the CO, or designee must contact the student, if age eighteen (18) or older, or the student's parents if under the age eighteen (18), within two (2) business days to advise s/he/them of the Board's intent to investigate the alleged misconduct, including the obligation of the CO or designee to conduct an investigation following all the procedures outlined for a formal complaint.

The Board's investigation of racial, sexual or religious/ethnic harassment or violence complaints will be conducted with maximum effort to protect the confidentiality of all those involved in the complaint or investigative process and to facilitate prompt resolution of the complaint. School officials may, in their discretion, take immediate steps to protect individual privacy and safety pending resolution.

Investigation, Complaint Procedure and Recommendation

An individual who believes s/he has been subjected to harassment and/or violence (hereinafter referred to as the

"Complainant"), may file a complaint, either orally or in writing, with a principal, the CO, Superintendent, or other County-level employee. Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other County-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than two (2) business days.

Throughout the course of the process, the CO should keep the parties informed of the status of the investigation and the decision-making process.

All complaints must include the following information to the extent it is available: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based; a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the person who allegedly engaged in the misconduct.

Pursuant to West Virginia State Board of Education policy 4373, upon receiving a complaint, the CO, in consultation with the Superintendent, will take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.

In making such a determination, the CO should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deems appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation.

Simultaneously, the CO will inform the individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent"), that a complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy 3122 - Nondiscrimination and Equal Employment Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the CO will complete an investigation into the allegations of discrimination/retaliation as soon as practical, but no later than ten (10) business days of receiving the formal complaint. The investigation, at a minimum, must include:

- A. Interviews with the Complainant;
- B. interviews with the Respondent;
- C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the

allegations;

- D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

In determining whether alleged conduct constitutes racial, sexual, or religious/ethnic harassment or violence, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

At the conclusion of the investigation, the CO shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard will be used.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or the designee, the Superintendent must either issue a final decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final decision will be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, s/he must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate and effective, and tailored to the specific situation.

A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of his/her receipt of the Superintendent's final decision.

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting. The decision of the Board will be final. (See Policy 9130 – Public Complaints and West Virginia State Board of Education policy 7211 – Appeals Procedure for Citizens.)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the employee alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The Complainant may be represented, at his/her own cost, at any of the above-described meetings/hearings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit

of other remedies such as the filing of a complaint with the Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it.

The County will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s).

During the course of a formal investigation, the CO or designee will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that s/he learns and/or provides during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the School Board's records retention policy.

Results of the Investigation

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.

Discipline and Other Actions

In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

- A. Upon receipt of a finding that the complaint is substantiated, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in West Virginia State Board of Education policy 4373 and Policy 5600 – Student Discipline. Actions for staff may include but not be limited to warning, suspension, termination, revocation of licensure, notification of law enforcement, and/or human services. Actions for public guests may include but not be limited to removal from school property and school sponsored functions, notification of law enforcement, and/or human services.
- B. The appropriate school official shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.
- C. The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when an investigation shows that harassment or violence did occur and all actions

taken in response to the incident.

Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.

Retaliation

Submission of a complaint or report of racial, sexual, or religious/ethnic harassment or violence will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.

Retaliation against a person who makes a report or files a complaint alleging anti-harassment and violence, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws. "Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment.

The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of racial, sexual or religious/ethnic harassment or violence, or any person who cooperates, testifies, assists, or participates in any racial, sexual or religious/ethnic harassment or violence investigation, proceeding, or hearing. The Board will also discipline, as appropriate, any person who falsely reports religious/ethnic, racial or sexual harassment.

Student-Employee Relationships Prohibited

Amorous relationships between employees of the Board and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties and disciplinary action defined herein.

Non-Harassment

The Board recognizes that not every advance, conduct, or interaction of a racial, sexual or religious/ethnic or violent nature constitutes harassment. Whether a particular act, conduct, interaction, or incident is a personal, consensual, welcome interaction or social relationship without discriminatory motivation or effect on employment or education status will be determined based upon consideration of all facts and surrounding circumstances.

The Board recognizes that not all reports of allegations of sexual, racial, and/or religious/ethnic harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.

Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing of charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et seq., filing a citizen's appeal under West Virginia State Board of Education policy 7211, filing a Title IX grievance

under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.

Sexual Harassment as Abuse

Under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the County School and its employees shall comply with the provisions of law for reporting such abuse.

Dissemination of the Policy

This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.

This policy shall appear in the Student and Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.

The students and staff of the Board shall be trained on these regulations and on means for effectively promoting the goals of this policy.

The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with West Virginia State Board of Education policy.

Groups and persons utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.

Implementation and Education

The CO shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences. Multi-cultural education programs must be established to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

The CO shall present written and verbal information to all faculty, staff and students at least once annually.

Dissemination of written and verbal information may be made by a designee(s) of the CO as appropriate, and such presentation must be age-appropriate for students K-4, 5-8, and 9-12.

~~West Virginia State Board of Education policy 4373~~

~~WV Code 18-2-7b, 49-6A-2~~

~~29 C.F.R. Part 1635~~

~~20 U.S.C. 1681 et seq.~~

~~29 U.S.C. 621 et seq.~~

~~29 U.S.C. 794~~

~~42 U.S.C. 12101 et seq.~~

~~42 U.S.C. 2000d et seq.~~

~~42 U.S.C. 2000e et seq.~~

~~42 U.S.C. 2000ff et seq., The Genetic Information and Nondiscrimination Act~~

~~42 U.S.C. 1983~~

~~National School Boards Association Inquiry and Analysis – May 2008~~

Anti-Harrassment of Persons with a Disability

It is the policy of the Board of Education to maintain an education and work environment which is free from harassment of a person with a mental, physical, developmental, or sensory disability. This commitment applies to all Board operations, programs, and activities. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting disability harassment. This policy applies to unlawful conduct occurring on school property, or at another location if such conduct occurs during an activity sponsored by the Board.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01 Bullying addresses those instances of bullying which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops, and through school computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager, or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

The Board will vigorously enforce its prohibition against harassment based on a disability and encourages those within the County School System community as well as third parties, who feel aggrieved to seek assistance to rectify the problems. The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated; the Board will take immediate steps to end the harassment. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action.

For purposes of this policy, "County School System community" means students, administrators, teachers, staff, and all other school personnel, including Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on County School System property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the County School System community at school-related events/activities (whether on or off School property).

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when:

- A. the conduct has the purpose or effect of interfering with the individual's or educational performance;
- B. creates an intimidating, hostile, or offense working and/or learning environment; or of
- C. interfering with one's ability to participate in or benefit from a class or an educational program or activity.

Such harassment may occur where conduct is directed at the characteristics of a person's disabling condition, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like. Such harassment may further occur where conduct is directed at or pertains to a person's genetic information.

Reporting Procedures

A. In Each School Building - The building principal is the person responsible for receiving oral or written reports of disability harassment at the building level. Upon receipt of a report of student conduct, the principal must notify the Human Rights Officer promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report will be forwarded to the Human Rights Officer and to the Superintendent.

If the report alleges employee misconduct, the building principal must promptly notify the Human Rights Officer who will initiate, or direct, an investigation of the complaint. This investigation may be conducted by school officials or third parties designated by the Superintendent. Within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.

Anytime the report is given to the building principal verbally, the principal shall reduce it to written form before the close of the next working day. If the complaint involves the building principal, the complaint shall be made directly to the Human Rights Officer.

For school buildings/facilities which do not have a building principal, such as the transportation and maintenance departments, the Director of such building or facility will be the person responsible for receiving oral or written reports of disability harassment or violence. All other provisions of the paragraph above apply to such situations, except that the term "Director" shall be substituted for the term "building principal".

B. County-wide - The Board hereby designates its Title IX Coordinator as the Human Rights Officer to receive reports or complaints of Disability harassment from any individual, employee or victim of disability harassment and also from the building principals as outlined above. If the complaint involves the Human Rights Officer, the complaint or report shall be filed directly with the Superintendent, who shall then be responsible for the investigation and recommendation described in the Investigation and Recommendation section of this policy. The name of the Human Rights Officer, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.

C. Submission of a complaint or report of disability harassment will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.

D. Use of formal reporting forms is not mandatory.

E. All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must report the incident to either the building principal or the Human Rights Officer within twenty-four (24) hours of observing the incident.

The Board's investigation of disability harassment complaints will be conducted with maximum effort to protect the confidentiality of all those involved in the complaint or investigative process and to facilitate prompt resolution of the complaint. School officials, may in their discretion, take immediate steps to protect individual privacy and safety pending resolution.

Investigation and Recommendation

The individual(s) designated by this policy to investigate, shall, upon receipt of a report or complaint alleging disability harassment, immediately will authorize an investigation. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary. The investigating party shall provide a written report of the result of the investigation and a recommendation of discipline within ten (10) school days of receiving the complaint to the Superintendent and to the Human Rights Officer. If the Superintendent is the subject of the complaint, the report shall be submitted to the Human Rights Officer and to the President of the Board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

In determining whether alleged conduct constitutes disability harassment, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

The investigation must, at a minimum, consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and other who may have knowledge of the alleged incident(s) or circumstance(s) giving rise to the complaint. The investigation may also consist of any other methods, documents, and review of circumstances deemed pertinent by the investigator(s).

Confidentiality

Confidentiality of the filing of complaints, the identity of subject and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it. Therefore, the right of confidentiality of complainants, subject, witnesses, and investigators will be vigorously protected and violations of such confidentiality may, itself, be grounds for disciplinary action.

Results of the Investigation

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.

Discipline and Other Actions

In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

A. Upon receipt of a recommendation that the complaint is valid, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in Policy 5600. Actions for staff may include, but not be limited to, warning, suspension, termination revocation of license, notification of law enforcement, and/or human services. Actions for public guests may include but not be limited to removal from school property and school sponsored functions, notification of law enforcement and/or human services.

B. The appropriate school official shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.

C. The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment when an investigation shows that harassment did occur and all actions taken in response to the incident. Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.

Reprisal

The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of

disability harassment, or any person who cooperates, testifies, assists, or participates in any disability harassment investigation, proceeding, or hearing. "Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment. The appropriate school official will also discipline, as appropriate, any person who falsely reports disability harassment.

Non-Harassment

The Board recognizes that not all reports of allegations of disability harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.

Right to Alternative Complaint Procedures

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing of charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et seq., filing a citizen's appeal under West Virginia Board of Education policy 7211, filing a Title IX grievance under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.

Dissemination of the Policy

This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.

This policy shall appear in the Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.

The students and staff of the Board shall be trained on these regulations and on means for effectively promoting the goals of this policy.

The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with State Board of Education policy.

Groups and person utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.

Implementation and Education

The Human Rights Officer shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences.

The Human Rights Officer shall present written and verbal information to all faculty, staff and students at least once annually. Dissemination of written and verbal information may be made by a designee(s) of the Human Rights Officer as appropriate, and such presentation must be age-appropriate for students K-4, 5-8, and 9-12.

WV State Board policy 4373

Nondiscrimination and Equal Employment Opportunity

The Board of Education does not discriminate in the employment of administrative staff on the basis of the Protected Classes of race, religion, color, national origin, ethnicity, ancestry, sex (including transgender status, change of sex or gender identity), pregnancy, age, blindness, disability, veteran status, military status, genetic information, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability or any other characteristic protected by law in its employment practices. (See West Virginia State Board of Education policy 4373)

County Compliance Officers

The Board designates the following individuals to serve as the County's "Compliance Officers" (hereinafter referred to as the "COs").

Dr. William Chapman _____ Mrs. Melissa O'Brien

(Name) _____ (Name)

Personnel Director _____ Special Education Director

(County Title) _____ (County Title)

(304) 927-6406 _____ (304) 927-6411

(Telephone Number) _____ (Telephone Number)

813 Capitol St. _____ 813 Capitol St.

Spencer, WV 25276 _____ Spencer, WV 25276

(Office Address) _____ (Office Address)

wchapman@k12.wv.us _____ mobrien@k12.wv.us

(E-mail Address) _____ (E-mail Address)

The names, titles, and contact information of these individuals will be published annually in the staff handbooks and/or on the County's web site.

The COs are responsible for coordinating the County's efforts to comply with applicable Federal and State laws and regulations, including the County's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination, retaliation, or denial of equal access. The COs shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973, (as amended), Genetic Information Nondiscrimination Act (GINA) and the Age Discrimination in Employment Act of 1975 (ADEA) is provided to staff members and the general public. A copy of each of the Acts and regulations on which this notice is based may be found in the CO's office.

Reports and Complaints of Unlawful Discrimination and Retaliation

Employees are encouraged to promptly report incidents of unlawful discrimination and/or retaliation to an administrator, supervisor, or other County-level official so that the Board may address the conduct. Any administrator,

supervisor, or other County-level employee or official who receives such a complaint shall file it with the CO at his/her first opportunity, but no later than two (2) school days.

Employees who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's employment. While there are no time limits for initiating complaints under this policy, individuals should make every effort to file a complaint as soon as possible after the conduct occurs while the facts are known and potential witnesses are available.

The COs will be available during regular school/work hours to discuss concerns related to unlawful discrimination/retaliation. COs shall accept complaints of unlawful discrimination/retaliation directly from any member of the County school community or a visitor to the County schools, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint, either directly or through a school building administrator, a CO will begin either an informal or formal process (depending on the request of the person alleging the discrimination/retaliation or the nature of the alleged discrimination/retaliation), or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy to any person who files a complaint. In the case of a formal complaint, the CO will prepare recommendations for the Superintendent or oversee the preparation of such recommendations by a designee. All members of the County community must report incidents of discrimination/retaliation that are reported to them to the CO at his/her first opportunity, but no later than two (2) business days of learning of the incident/conduct.

Any Board employee who directly observes unlawful discrimination/retaliation is obligated, in accordance with this policy, to report such observations to one of the COs within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the misconduct. Thereafter, the CO or designee must contact the employee within two (2) business days to advise him/her of the Board's intent to investigate the wrongdoing.

Investigation and Complaint Procedure (See Form 3122 F2)

Any employee who believes that s/he has been subjected to unlawful discrimination or retaliation may seek resolution of his/her complaint through the procedures described below. The complaint procedures involve an investigation of the individual's claims and a process for rendering a decision regarding whether the charges are substantiated.

Due to the sensitivity surrounding complaints of unlawful discrimination or retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. Once the formal complaint process is begun, the investigation will be completed in a timely manner (ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of unlawful discrimination or retaliation with the United States Department of Education Office for Civil Rights or Equal Employment Opportunity Commission ("EEOC").

Informal Complaint Procedure

The goal of the informal complaint procedure is to stop quickly inappropriate behavior and facilitate resolution through an informal means, if possible. The informal complaint procedure is provided as a less formal option for an employee who believes s/he has been unlawfully discriminated or retaliated against.

This informal procedure is not required as a precursor to the filing of a formal complaint. The informal process is only available in those circumstances where the parties (the alleged target of the discrimination/retaliation and individual(s) alleged to have engaged in the discrimination) agree to participate in it.

Employees who believe that they have been unlawfully discriminated/retaliated against may proceed immediately to the formal complaint process and individuals who seek resolution through the informal procedure may request that the informal process be terminated at any time to move to the formal complaint process.

All complaints involving a County employee or any other adult member of the County school community against a student will be formally investigated.

As an initial course of action, if an individual feels that s/he is being unlawfully discriminated/retaliated against and s/he is able and feels safe doing so, the individual should tell or otherwise inform the person who engaged in the allegedly discriminatory/retaliatory conduct that it is inappropriate and must stop. The complaining individual should address the alleged misconduct as soon after it occurs as possible. The COs are available to support and counsel individuals when taking this initial step or to intervene on behalf of the individual if requested to do so. An individual who is uncomfortable or unwilling to inform the person who allegedly engaged in the unlawful conduct of his/her concerns is not prohibited from otherwise filing an informal or a formal complaint. In addition, with regard to certain types of unlawful discrimination, such as sexual discrimination, the CO may advise against the use of the informal complaint process.

An individual who believes s/he has been unlawfully discriminated/retaliated against may make an informal complaint, either orally or in writing: (1) to a building administrator; (2) directly to one of the COs; and/or (3) to the Superintendent or other County level employee.

All informal complaints must be reported to one of the COs who will either facilitate an informal resolution as described below, or appoint another individual to facilitate an informal resolution.

The County's informal complaint procedure is designed to provide employees who believe they are being unlawfully discriminated/retaliated against with a range of options aimed at bringing about a prompt resolution of their concerns. Depending upon the nature of the complaint and the wishes of the individual claiming unlawful discrimination/retaliation, informal resolution may involve, but not be limited to, one or more of the following:

-
- D. Advising the individual about how to communicate his/her concerns to the person who allegedly engaged in the discriminatory/retaliatory behavior.
 - E. Distributing a copy of Policy 3122 — Nondiscrimination and Equal Employment Opportunity this policy as a reminder to the individuals in the school building or office where the individual whose behavior is being questioned works.
 - F. If both parties agree, the CO may arrange and facilitate a meeting between the individual claiming discrimination/retaliation and the individual accused of engaging in the misconduct to work out a mutual resolution.

While there are no set time limits within which an informal complaint must be resolved, the CO or designee will exercise his/her authority to attempt to resolve all informal complaints within fifteen (15) business days of receiving the informal complaint. Parties who are dissatisfied with the results of the informal complaint process may proceed to file a formal complaint. And, as stated above, parties may request that the informal process be terminated at any time to move to the formal complaint process.

All materials generated as part of the informal complaint process will be retained by the COs in accordance with the Board's records retention policy. (See Policy 8310)

Formal Complaint Procedure

If a complaint is not resolved through the informal complaint process, if one of the parties requested that the informal complaint process be terminated to move to the formal complaint process, or if the individual elects to file a formal complaint initially, the formal complaint process shall be implemented.

An individual who believes s/he has been subjected to unlawful discrimination/retaliation (hereinafter referred to as the "Complainant"), may file a formal complaint, either orally or in writing, with a principal, the CO, Superintendent, or other County-level employee. Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other County-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than two (2) business days.

Throughout the course of the process, the CO should keep the parties informed of the status of the investigation and the decision-making process.

All formal complaints must include the following information to the extent it is available: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based; a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a formal complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the person who allegedly engaged in the misconduct.

Pursuant to West Virginia State Board of Education Policy 4373, upon receiving a formal complaint, the CO, in consultation with the Superintendent will take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.

In making such a determination, the CO should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deems appropriate in consultation with the Superintendent.

Within two (2) business days of receiving the complaint, the CO or designee will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation.

Simultaneously, the CO will inform the individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent"), that a complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy 3122 – Nondiscrimination and Equal Employment Opportunity this policy. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.

Although certain cases may require additional time, the CO or a designee will attempt to complete an investigation into

the allegations of discrimination/retaliation within fifteen (15) business days of receiving the formal complaint. The investigation will include:

- E. interviews with the Complainant;
- F. interviews with the Respondent;
- G. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
- H. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.

At the conclusion of the investigation, the CO or the designee shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard will be used.

Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or the designee, the Superintendent must either issue a final decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final decision will be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, s/he must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age appropriate and effective, and tailored to the specific situation.

A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of his/her receipt of the Superintendent's final decision.

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting. The decision of the Board will be final. (See West Virginia State Board of Education policy 7211 — Appeals Procedure for Citizens.)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the employee alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The Complainant may be represented, at his/her own cost, at any of the above-described meetings/hearings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

The County will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s).

During the course of a formal investigation, the CO or designee will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that s/he learns and/or provides during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the Board's records retention policy.

Sanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful discrimination by taking appropriate action reasonably calculated to stop and prevent further misconduct. While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee. All disciplinary action will be taken in accordance with applicable State law and the terms of the relevant collective bargaining agreement(s). When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter. In those cases where unlawful discrimination/retaliation is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies, consistent with the terms of the relevant collective bargaining agreement(s).

Where the Board becomes aware that a prior remedial action has been taken against an employee, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its recurrence, and remedy its effect.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination/retaliation, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

Education and Training

In support of this policy, the Board promotes preventative educational measures to create greater awareness of unlawful discriminatory practices. The Superintendent shall provide appropriate information to all members of the County community related to the implementation of this policy and shall provide training for County students and staff where appropriate. All training, as well as all information provided regarding the Board's policy and discrimination in general, will be age and content appropriate.

Nondiscrimination Based on Genetic Information of the Employee

The Board of Education prohibits discrimination on the basis of genetic information in all aspects of employment, including hiring, firing, compensation, job assignments, promotions, layoffs, training, fringe benefits, or any other terms, conditions, or privileges of employment. The Board also does not limit, segregate, or classify employees in any way that would deprive or tend to deprive them of employment opportunities or otherwise adversely affect the status of an

employee as an employee, based on genetic information. Harassment of a person because of his/her genetic information is also prohibited. Likewise, retaliation against an applicant or employee for engaging in protected activity is prohibited.

The Board shall not discriminate against any employee or applicant because such employee or applicant has opposed any act or practice prohibited by this policy or because such employee or applicant made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy.

In accordance with the Genetic Information Nondiscrimination Act (GINA), the Board shall not request, require or purchase genetic information of employees, their family members or applicants for employment. Further, in compliance with this Act, employees are directed not to provide any genetic information, including the individual's family medical history, in response to necessary requests for medical information, with the exception that family medical history may be acquired as part of the certification process for FMLA leave, when an employee is asking for leave to care for an immediate family member with a serious health condition. Applicants for employment are directed not to provide any genetic information, including the individual's family medical history, in response to requests for medical information as part of the County's application process.

The County recognizes that genetic information may be acquired through commercially and publicly available documents like newspapers, books, magazines, periodicals, television shows or the Internet. The County prohibits, however, its employees from searching such sources with the intent of finding or obtaining genetic information, or accessing sources from which they are likely to acquire genetic information.

"Genetic information," as defined by GINA, means information about: (a) an individual's genetic tests; (b) the genetic tests of that individual's family members; (c) the manifestation of disease or disorder in family members of the individual (i.e., family medical history); (d) an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or (e) the genetic information of a fetus carried by an individual or a pregnant woman who is a family member of the individual and the genetic information of an embryo legally held by an individual or family member using assistive reproductive technology.

If the County either legally and/or inadvertently receives genetic information about an employee or applicant for employment from the employee, applicant for employment or a medical provider it shall be treated as a confidential medical record in accordance with law.

The Superintendent shall appoint a compliance officer who shall be responsible for overseeing the County's compliance with Federal regulations and promptly dealing with any inquiries or complaints. S/He shall also verify that proper notice of nondiscrimination for Title II of the Genetic Information Nondiscrimination Act of 2008 is provided to staff members, and that all County requests for health-related information (e.g., to support an employee's request for reasonable accommodation under the ADA or a request for sick leave) is accompanied by a written warning that directs the employee or health care provider not to collect or provide genetic information. The warning shall read as follows:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II, including the Board of Education, from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by law. To comply with this law, do not provide any genetic information when responding to this request for medical information (unless the request pertains to a request for FMLA leave for purposes of caring for an immediate family member with a serious health condition). "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic test, the fact that an individual or an individual's family member sought or received genetic services or participated in clinical research that includes genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive

reproductive services.

Section 504 / ADA Prohibition Against Disability Discrimination in Employment

The Board of Education prohibits discrimination against any employee or applicant based upon his/her disability. As such, the Board will not engage in employment practices or adopt policies that discriminate on the basis of disability, or otherwise discriminate against qualified individuals with disabilities in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions and privileges of employment. The Board further will not limit, segregate or classify applicants or employees in any way that adversely affects their opportunities or status because of disability. Additionally, the Board will not participate in any contractual or other relationships that have the effect of subjecting qualified individuals with disabilities who are applicants or employees to discrimination on the basis of disability.

"An individual with a disability" means a person who has, had a record of, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities. Major life activities are functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, use of assistive technology, reasonable accommodations or "auxiliary aides or services," learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy.

A qualified person with a disability means the individual satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of the job in question.

The Board will provide a reasonable accommodation to a qualified individual who has an actual disability or who has a record of a disability, unless the accommodation would impose an undue hardship on the operation of the County's program and/or activities. A reasonable accommodation is not required for an individual who is merely regarded as having a disability.

County Compliance Officer(s)

The Board designates the following individual(s) to serve as the County's 504 Compliance Officer(s)/ADA Coordinator(s) (hereinafter referred to as the "CO(s)").

Dr. William Chapman ————— Mrs. Melissa O'Brien

(Name) _____ (Name) _____
Personnel Director _____ Special Education Director _____
(County Title) _____ (County Title) _____
(304) 927-6406 _____ (304) 927-6411 _____
(Telephone Number) _____ (Telephone Number) _____
813 Capitol St. _____ 813 Capitol St. _____
Spencer, WV 25276 _____ Spencer, WV 25276 _____
(Office Address) _____ (Office Address) _____
wchapman@k12.wv.us _____ mobrien@k12.wv.us _____
(E-mail Address) _____ (E-mail Address) _____

The name(s), title(s), and contact information of this/these individual(s) will be published annually in the staff handbooks and/or on the County's web site.

The CO(s) are responsible for coordinating the County's efforts to comply with and fulfill its responsibilities under Section 504 and Title II of the Americans with Disabilities Act, as amended ("ADA"). A copy of Section 504 and the ADA, including copies of their implementing regulations, may be obtained from the CO.

The CO(s) will oversee the investigation of any complaints of discrimination based on disability, which may be filed pursuant to the Board's adopted internal complaint procedure, and will attempt to resolve such complaints. The Board will provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA. (See complaint procedure below.)

Training

The CO(s) will also oversee the training of employees in the County so that all employees understand their rights and responsibilities under Section 504 and the ADA, and are informed of the Board's policies, administrative guidelines and practices with respect to fully implementing and complying with the requirements of Section 504/ADA.

The Board will provide in-service training and consultation to staff responsible for the education of persons with disabilities, as necessary and appropriate.

Facilities

No qualified person with a disability will, because the County's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504/ADA applies.

For facilities constructed or altered after June 3, 1977, the County will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the County is committed to operating its programs and activities so that they are readily accessible to persons with disabilities.

Notice

Notice of the Board's policy on nondiscrimination in employment practices and the identity of the CO(s) will be posted throughout the County, and published in the County's recruitment statements or general information publications.

Complaint Procedures

If a person believes that s/he has been discriminated against on the basis of his/her disability, the person may utilize the following complaint procedure as a means of reaching, at the lowest possible administrative level, a prompt and equitable resolution of the matter.

In accordance with Section 504 of the Rehabilitation Act of 1973 and its implementing regulations ("Section 504"), employees will be notified of their right to file an internal complaint regarding an alleged violation, misinterpretation or misapplication of Section 504. In addition, employees will be notified of their right to file a complaint with the U.S. Department of Education's Office for Civil Rights.

Internal complaints must be put in writing and must identify the specific circumstances or areas of dispute that have given rise to the complaint, and offer possible solutions to the dispute. The complaint must be filed with a CO within the time limits specified below. The CO is available to assist individuals in filing a complaint.

Internal Complaint Procedure

The following internal complaint procedure is available to employees for the prompt and equitable resolution of complaints alleging discrimination based upon disability. This complaint procedure is not available to unsuccessful applicants. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the U.S. Department of Education's Office for Civil Rights.

- G. An employee with a complaint based on alleged discrimination on the basis of disability may first discuss the problem with the CO.
- H. If the informal discussion does not resolve the matter, or if the employee skips Step A, the individual may file a formal written complaint with the CO. The written complaint must contain the name and address of the individual or representative filing the complaint, be signed by the complainant or someone authorized to sign for the complainant, describe the alleged discriminatory action in sufficient detail to inform the CO of the nature and date of the alleged violation, and propose a resolution. The complaint must be filed within thirty (30) calendar days of the circumstances or event that gives rise to the complaint, unless the time for filing is extended by the CO for good cause.
- I. The CO will conduct an independent investigation of the matter (which may or may not include a hearing). This complaint procedure contemplates informal, but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to present witnesses and other evidence relevant to the complaint. The CO will provide the complainant with a written disposition of the complaint within ten (10) workdays. If no decision is rendered within ten (10) workdays, or the decision is unsatisfactory in the opinion of the complainant, the employee may file, in writing, an appeal with the Superintendent. The CO shall maintain the County's files and records relating to the complaint.
- J. The Superintendent will, within ten (10) workdays of receiving the written appeal, conduct a hearing with all parties involved in an attempt to resolve the complaint. The Superintendent will render his/her decision within ten (10) workdays of the hearing.
- K. The employee may be represented, at his/her own cost, at any of the above-described meetings/hearings.
- L. The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

If it is determined that the complainant was subjected to unlawful discrimination, the CO must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age appropriate and effective, and tailored to the specific situation.

OCR Complaint

At any time, if an employee believes that s/he has been subjected to discrimination based upon his/her disability in violation of Section 504 or the ADA, the individual may file a complaint with the U.S. Department of Education's Office for Civil Rights ("OCR"). The OCR can be reached at:

U.S. Department of Education

Office for Civil Rights

Philadelphia

150 S. Independence Mall West,

Suite 372, Public Ledge Building

Philadelphia, PA 19016-9111

Main Line: (800) 368-1019

Fax: (215) 861-4431

TDD: (800) 537-7697

Retaliation

Retaliation against a person who makes a report or files a complaint alleging unlawful discrimination, or participates as a witness in an investigation, is prohibited. Specifically, the Board will not take adverse employment action against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by Section 504 or the ADA, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

29 C.F.R. Part 1630

29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended

34 C.F.R. Part 104

42 U.S.C. 12101 et seq., Americans with Disabilities Act of 1990, as amended

Anti-Harassment and Violence

General Statement

Racial, sexual, and religious/ethnic harassment is a form of discrimination which violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, et seq., and WV Code 5-11-1, et seq., the West Virginia Human Rights Act.

It is the policy of the Board of Education to maintain an education and work environment that is free from all forms of unlawful harassment and violence.

This policy applies to any student, staff member or member of the public during any school related activity or during any education sponsored event whether in a building or other property used or operated by the Board of Education or in any other facility being used by the Board.

The Board will vigorously enforce its prohibition against discriminatory harassment based on race, color, national origin, sex (including transgender status, change of sex, or gender identity), disability, age, blindness, creed or religion,

ancestry, socioeconomic status, physical appearance, sexual orientation, mental/physical/developmental/sensory disability, or genetic information (collectively, "Protected Classes") that are protected by Federal civil rights laws (hereinafter referred to as "unlawful harassment"), and encourages those within the County School community as well as third parties, who feel aggrieved to seek assistance to rectify such problems. The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated, the Board will take immediate steps to end the harassment, prevent its reoccurrence, and remedy its effects. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action. (See West Virginia State Board of Education policy 4373)

For purposes of this policy, "County School community" means students, administrators, and professional and classified staff, as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on County School property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the County School community at school related events/activities (whether on or off County School property).

The Board will act promptly and confidentially to investigate all harassment and violence complaints, formal or informal, verbal or written, and will take appropriate disciplinary action based upon the results of the investigation.

Other Violations of the Anti-Harassment Policy

The Board will also take immediate steps to impose disciplinary action on individuals engaging in any of the following prohibited acts:

- D.—Retaliating against a person who has made a report or filed a complaint alleging unlawful harassment, or who has participated as a witness in a harassment investigation.
- E.—Filing a malicious or knowingly false report or complaint of unlawful harassment.
- F.—Disregarding, failing to investigate adequately, or delaying investigation of allegations of harassment, when responsibility for reporting and/or investigating unlawful harassment charges comprises part of one's supervisory duties.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01—Bullying addresses those instances of bullying and harassment which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless, behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops, and through school computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and, when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission, or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager, or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

Definitions

- H. Sexual harassment—Sexual harassment consists of sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:

4. submission to the conduct or communication is made a term or condition either explicitly or implicitly of obtaining or retaining employment, or of obtaining an education; or
5. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
6. creating an intimidating, hostile or offensive or educational environment.

Sexual harassment may include, but is not limited to:

13. verbal or written harassment of a sexual nature or abuse;
14. pressure for sexual activity;
15. inappropriate or unwelcome patting, pinching, or physical conduct;
16. sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats and/or promises concerning an individual's employment or educational status;
17. unwelcome behavior, verbal or written words or symbols, directed at an individual because of gender;
18. the use of authority to emphasize the sexuality of a student in a manner that prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities;
19. unwelcome sexual flirtations, advances, or propositions from a member of the same or opposite sex;
20. verbal abuse of a sexual nature, without regard to whether the verbal abuse specifically refers to sexual characteristics at whom the verbal abuse is directed;
21. verbal or written comments about an individual's body;
22. sexually degrading word(s) or actions used to intimidate, describe an individual or to refer to some aspect of the individual's behavior, appearance, attitude, or conduct;
23. the display, use or dissemination of sexually suggestive gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials and materials displayed by electronic means, sex based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
24. nonsexual conduct, including words or actions, directed toward a person because of their gender that tends to ridicule, criticize, discriminate, or otherwise makes it more difficult for that person to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of sexual harassment. Any sexual harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as sexual harassment under this policy.

NOTE: Sexual conduct/relationships with students by County employees or any other adult member of the County community is prohibited, and any teacher, administrator, coach, or other school authority who engages in sexual conduct with a student may also be guilty of the criminal charge of "sexual abuse or sexual assault as set forth in Article 8B, Chapter 61 of the West Virginia Code. The issue of consent may be irrelevant in regard to such criminal charge. In addition, under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the Board shall comply with the provisions of law for reporting such abuse.

- I. ~~Racial Harassment~~ — Racial harassment consists of physical, verbal, or written conduct relating to an individual's race when the conduct:
 9. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
 10. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
 11. otherwise adversely affects an individual's employment or academic opportunities;
 12. racial harassment includes racially degrading word(s) or actions used to intimidate, describe an individual or to

refer to some aspect of the individual's behavior, appearance, attitude, or conduct;

13. the display, use, or dissemination of racially motivated gestures, objects, pictures, and/or jokes by any means, including, but not limited to, printed materials displayed by electronic means;
14. race-based labeling or stereotyping with respect to mental, physical, or other abilities, talents, occupational or life goals, etc.;
15. unwelcome behavior, verbal or written words or symbols, directed at an individual because of race;
16. conduct, including word(s) or actions, directed toward a person because of their race that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of racial harassment. Any racial harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as racial harassment under this policy.

J. ~~Religious/Ethnic Harassment~~ — Religious/ethnic harassment consists of physical, verbal or written conduct which is related to an individual's religion or ethnic background when the conduct:

8. has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment;
9. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance;
10. otherwise adversely affects an individual's employment or academic opportunities;
11. religious/ethnic degrading word(s) or actions used to intimidate, describe an individual or refer to some aspect of the individual's behavior, appearance, attitude or conduct;
12. the display, use or dissemination of degrading religious/ethnic suggestive gestures, objects, pictures, and/or jokes by any means including, but not limited to, printed materials and materials displayed by electronic means;
13. religious/ethnic based labeling or stereotyping with respect to mental, physical or other abilities, talents, occupational or life goals, etc.;
14. conduct, including word(s) or actions, directed toward a person because of their religion or ethnicity that tends to distract or otherwise make it more difficult to perform their job and/or achieve an education.

It is the responsibility of all students and employees to promote and to maintain an environment free of all types of religious/ethnic harassment. Any religious/ethnic harassment, as defined, when perpetrated on any student, volunteer, third party or employee by any student, volunteer, third party or employee will be treated as religious/ethnic harassment under this policy.

K. ~~Sexual Violence~~ — Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts include the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.

Sexual violence may include, but is not limited to:

6. touching, patting, grabbing or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
7. coercing, forcing or attempting to coerce or force the touching of anyone's intimate parts;
8. coercing, forcing or attempting to coerce or force sexual intercourse or a sexual act on another;
9. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another;
10. threatening or forcing exposure of intimate apparel or body parts by removal of clothing.

L. ~~Racial Violence~~ — Racial violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, race.

~~M. Religious/Ethnic Violence—Religious/ethnic violence is a physical act of aggression or assault upon another because of, or in a manner reasonably related to, religion or ethnicity.~~

~~N. Assault—Assault is defined as an act done with intent to cause fear in another of immediate bodily harm or death; or the threat to do bodily harm to another with present ability to carry out the threat.~~

Reports and Complaints of Harassing Conduct

Members of the County School community, which includes all staff, and third parties are encouraged to promptly report incidents of harassing conduct to an administrator, supervisor or other County School official so that the Board may address the conduct before it becomes severe, pervasive, or persistent.

Members of the County School community or third parties who believe they have been unlawfully harassed by another member of the County School community or a third party are entitled to utilize the Board's complaint process that is set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the complaining individual's employment unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

If, during an investigation of alleged bullying, aggressive behavior and/or harassment in accordance with Policy 5517.01—Bullying, the principal believes that the reported misconduct may have created a hostile work environment and may have constituted unlawful discriminatory harassment based on a Protected Class, the principal shall report the act of bullying, aggressive behavior and/or harassment to one of the Anti-Harassment Compliance Officers who shall investigate the allegation in accordance with this policy. While the Compliance Officer investigates the allegation, the principal shall suspend his/her Policy 5517.01 investigation to await the Compliance Officer's written report. The Compliance Officer shall keep the principal informed of the status of the Policy 3362 investigation and provide him/her with a copy of the resulting written report.

Reporting procedures are as follows:

- ~~I. Any employee who believes s/he has been the victim of harassment prohibited under this policy is encouraged to report the alleged harassment to the appropriate school official as identified in D below.~~
- ~~J. Teachers, administrators, and other school officials who have or receive notice that an employee has or may have been the victim of harassment prohibited under this policy shall immediately report the alleged harassment to the appropriate school official as defined in D below.~~
- ~~K. Any other person with knowledge or belief that an employee has or may have been the victim of harassment prohibited by this policy shall be encouraged to immediately report the alleged acts to an appropriate school official as identified in D below.~~
- ~~L. Appropriate school officials are as follows:
 - 4. Any complaint under this policy shall be reported to the County's Compliance Officer unless the complaint is regarding the Compliance Officer. In such cases, the complaints shall be reported to the Superintendent, who shall assume the role of the County School Compliance Officer for such complaints.
 - 5. Any complaint under this policy regarding the Superintendent or Board Member that is received by the County School Compliance Officer shall be referred to the School Board's legal counsel, who shall assume the role of the County School Compliance Officer for such complaints.
 - 6. Any complaint under this policy regarding the principal, who serves as the Building Compliance Officer, shall be reported to the County's Compliance Officer, and the County Compliance Officer shall conduct the investigation.~~
- M. The reporting party or complainant shall be encouraged to use a report form available from the principal of each building or available from the County School office, but oral reports shall be considered complaints as well. Use of

formal reporting forms shall not be mandated. However, all oral complaints shall be reduced to writing. Further, nothing in this policy shall prevent any person from reporting harassment directly to the Superintendent.

N. To provide individuals with options for reporting harassment to an individual of the gender with which they feel most comfortable, the County School shall designate both a male and a female County School Compliance Officer.

O. The investigation should be conducted by the CO or by the Superintendent within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.

P. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary.

Anti-Harassment Compliance Officers

The Board designates the following individuals to serve as "Anti-Harassment Compliance Officers" for the County School. They are hereinafter referred to as the "COs."

Dr. William Chapman _____ Mrs. Melissa O'Brien

(Name) _____ (Name)

Personnel Director _____ Special Education Director

(County Title) _____ (County Title)

(304) 927-6406 _____ (304) 927-6411

(Telephone Number) _____ (Telephone Number)

813 Capitol St. _____ 813 Capitol St.

Spencer, WV 25276 _____ Spencer, WV 25276

(Office Address) _____ (Office Address)

wchapman@k12.wv.us _____ mobrien@k12.wv.us

(E-mail Address) _____ (E-mail Address)

In Each School Building. The building principal is the person responsible for receiving oral or written reports of racial, sexual or religious/ethnic harassment or violence at the building level. Upon receipt of a report of student conduct, the principal must notify the CO promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report will be forwarded to the CO and to the Superintendent.

The names, titles, and contact information of these individuals will be published annually in the parent and staff handbooks and/or on the County School's web site.

The name of the CO, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.

The CO(s) will be available during regular school/work hours to discuss concerns related to unlawful harassment, to assist students, other members of the County School community, and third parties who seek support or advice when informing another individual about "unwelcome" conduct, or to intercede informally on behalf of the individual in those instances where concerns have not resulted in the filing of a formal complaint and where all parties are in agreement to participate in an informal process.

COs shall accept complaints of unlawful harassment directly from any member of the County School community or a visitor to the County School, or receive complaints that are initially filed with a school building administrator. Upon receipt of a complaint either directly or through a school building administrator, a CO will begin either an informal or formal process (depending on the request of the person alleging the harassment or the nature of the alleged harassment), or the CO will designate a specific individual to conduct such a process. In the case of a complaint, the CO will prepare recommendations for the Superintendent or will oversee the preparation of such recommendations by a designee. All members of the County School community must report incidents of harassment that are reported to them to the CO at his/her first opportunity, but no later than two (2) business days of learning of the incident.

All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must report the incident to either the building principal or the County School's Anti-Harassment Compliance Officer within twenty-four (24) hours of observing the incident. Additionally, any Board employee who observes an act of unlawful harassment is expected to intervene to stop the harassment, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the harassment.

Thereafter, the CO, or designee must contact the student, if age eighteen (18) or older, or the student's parents if under the age eighteen (18), within two (2) business days to advise s/he/them of the Board's intent to investigate the alleged misconduct, including the obligation of the CO or designee to conduct an investigation following all the procedures outlined for a formal complaint.

The Board's investigation of racial, sexual or religious/ethnic harassment or violence complaints will be conducted with maximum effort to protect the confidentiality of all those involved in the complaint or investigative process and to facilitate prompt resolution of the complaint. School officials may, in their discretion, take immediate steps to protect individual privacy and safety pending resolution.

Investigation, Complaint Procedure and Recommendation

An individual who believes s/he has been subjected to harassment and/or violence (hereinafter referred to as the "Complainant"), may file a complaint, either orally or in writing, with a principal, the CO, Superintendent, or other County-level employee. Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) calendar days after the conduct occurs. If a Complainant informs a principal, Superintendent, or other County-level employee, either orally or in writing, about any complaint of discrimination/retaliation, that employee must report such information to the CO at his/her first opportunity, but no later than two (2) business days.

Throughout the course of the process, the CO should keep the parties informed of the status of the investigation and the decision-making process.

All complaints must include the following information to the extent it is available: the identity of the individual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct; a detailed description of the facts upon which the complaint is based; a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the

~~CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.~~

~~Upon receiving a complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the person who allegedly engaged in the misconduct.~~

~~Pursuant to West Virginia State Board of Education policy 4373, upon receiving a complaint, the CO, in consultation with the Superintendent, will take reasonable steps to protect the Complainant, students, teachers, administrators, or other personnel in any manner throughout the pending investigation.~~

~~In making such a determination, the CO should consult the Complainant to assess his/her agreement to the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO may still take whatever actions s/he deems appropriate in consultation with the Superintendent.~~

~~Within two (2) business days of receiving the complaint, the CO will initiate a formal investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation.~~

~~Simultaneously, the CO will inform the individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent"), that a complaint has been received. The Respondent will be informed about the nature of the allegations and provided with a copy of any relevant policies and/or administrative guidelines, including Policy 3122 – Nondiscrimination and Equal Employment Opportunity. The Respondent must also be informed of the opportunity to submit a written response to the complaint within five (5) business days.~~

~~Although certain cases may require additional time, the CO will complete an investigation into the allegations of discrimination/retaliation as soon as practical, but no later than ten (10) business days of receiving the formal complaint. The investigation, at a minimum, must include:~~

- ~~E. Interviews with the Complainant;~~
- ~~F. interviews with the Respondent;~~
- ~~G. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;~~
- ~~H. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations.~~

~~In determining whether alleged conduct constitutes racial, sexual, or religious/ethnic harassment or violence, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.~~

~~At the conclusion of the investigation, the CO shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard will be used.~~

~~Absent extenuating circumstances, within five (5) business days of receiving the report of the CO or the designee, the~~

Superintendent must either issue a final decision regarding whether the charges have been substantiated or request further investigation. A copy of the Superintendent's final decision will be delivered to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above.

If the Superintendent determines the Complainant was subjected to unlawful discrimination/retaliation, s/he must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age appropriate and effective, and tailored to the specific situation.

A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) business days of his/her receipt of the Superintendent's final decision.

In an attempt to resolve the complaint, the Board shall meet with the concerned parties and their representatives within twenty (20) business days of the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent to each concerned party within ten (10) business days of this meeting. The decision of the Board will be final. (See Policy 9130—Public Complaints and West Virginia State Board of Education policy 7211—Appeals Procedure for Citizens.)

The Board reserves the right to investigate and resolve a complaint or report of unlawful discrimination/retaliation regardless of whether the employee alleging the unlawful discrimination/retaliation pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The Complainant may be represented, at his/her own cost, at any of the above-described meetings/hearings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

Confidentiality of the filing of complaints, the identity of subjects and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it.

The County will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations. All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. All Complainants proceeding through the formal investigation process will be advised that their identities may be disclosed to the Respondent(s).

During the course of a formal investigation, the CO or designee will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that s/he learns and/or provides during the course of the investigation.

All public records created as a part of an investigation of a complaint of discrimination/retaliation will be maintained by the CO in accordance with the School Board's records retention policy.

Results of the Investigation

The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.

Discipline and Other Actions

In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.

- D. Upon receipt of a finding that the complaint is substantiated, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in West Virginia State Board of Education policy 4373 and Policy 5600—Student Discipline. Actions for staff may include but not be limited to warning, suspension, termination, revocation of licensure, notification of law enforcement, and/or human services. Actions for public guests may include but not be limited to removal from school property and school sponsored functions, notification of law enforcement, and/or human services.
- E. The appropriate school official shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.
- F. The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment or violence when an investigation shows that harassment or violence did occur and all actions taken in response to the incident.

Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.

Retaliation

Submission of a complaint or report of racial, sexual, or religious/ethnic harassment or violence will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.

Retaliation against a person who makes a report or files a complaint alleging anti-harassment and violence, or participates as a witness in an investigation is prohibited. Specifically, the Board will not retaliate against, coerce, intimidate, threaten, or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws.

~~"Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment.~~

~~The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of racial, sexual or religious/ethnic harassment or violence, or any person who cooperates, testifies, assists, or participates in any racial, sexual or religious/ethnic harassment or violence investigation, proceeding, or hearing. The Board will also discipline, as appropriate, any person who falsely reports religious/ethnic, racial or sexual harassment.~~

~~Student-Employee Relationships Prohibited~~

~~Amorous relationships between employees of the Board and students are prohibited, and staff members found to have violated this prohibition shall be subject to the penalties and disciplinary action defined herein.~~

~~Non-Harassment~~

~~The Board recognizes that not every advance, conduct, or interaction of a racial, sexual or religious/ethnic or violent nature constitutes harassment. Whether a particular act, conduct, interaction, or incident is a personal, consensual, welcome interaction or social relationship without discriminatory motivation or effect on employment or education status will be determined based upon consideration of all facts and surrounding circumstances.~~

~~The Board recognizes that not all reports of allegations of sexual, racial, and/or religious/ethnic harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.~~

~~Right to Alternative Complaint Procedures~~

~~These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing of charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-1, et seq., filing a citizen's appeal under West Virginia State Board of Education policy 7211, filing a Title IX grievance under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.~~

~~Sexual Harassment as Abuse~~

~~Under certain circumstances, sexual harassment may constitute child and/or sexual abuse under Chapter 49 of the West Virginia Code. In such situations, the County School and its employees shall comply with the provisions of law for reporting such abuse.~~

~~Dissemination of the Policy~~

~~This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.~~

~~This policy shall appear in the Student and Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.~~

The students and staff of the Board shall be trained on these regulations and on means for effectively promoting the goals of this policy.

The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with West Virginia State Board of Education policy.

Groups and persons utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.

Implementation and Education

The CO shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences. Multi-cultural education programs must be established to foster an attitude of understanding and acceptance of individuals from a variety of cultural, ethnic, racial and religious backgrounds.

The CO shall present written and verbal information to all faculty, staff and students at least once annually. Dissemination of written and verbal information may be made by a designee(s) of the CO as appropriate, and such presentation must be age appropriate for students K-4, 5-8, and 9-12.

West Virginia State Board of Education policy 4373

WV Code 18-2-7b, 49-6A-2

29 C.F.R. Part 1635

20 U.S.C. 1681 et seq.

29 U.S.C. 621 et seq.

29 U.S.C. 794

42 U.S.C. 12101 et seq.

42 U.S.C. 2000d et seq.

42 U.S.C. 2000e et seq.

42 U.S.C. 2000ff et seq., The Genetic Information and Nondiscrimination Act

42 U.S.C. 1983

National School Boards Association Inquiry and Analysis—May 2008

Anti-Harassment of Persons with a Disability

It is the policy of the Board of Education to maintain an education and work environment which is free from harassment of a person with a mental, physical, developmental, or sensory disability. This commitment applies to all Board operations, programs, and activities. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting disability harassment. This policy applies to unlawful conduct occurring on school property, or at another location if such conduct occurs during an activity sponsored by the Board.

Furthermore, the Board is committed to providing an educational setting that is safe, secure, and free from harassment and bullying for all of its students and school employees. Policy 5517.01 Bullying addresses those instances of bullying which do not rise to the level of legally protected harassment under Federal law, but are, nonetheless behaviors that may occur on school grounds, at school-sponsored events, on school buses, at school bus stops, and through school

computer networks and through other electronic communication or transmission that will not be tolerated and must be appropriately identified, reported, investigated, and when substantiated, be the subject of appropriate disciplinary action. An electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager, or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

The Board will vigorously enforce its prohibition against harassment based on a disability and encourages those within the County School System community as well as third parties, who feel aggrieved to seek assistance to rectify the problems. The Board will investigate all allegations of harassment and in those cases where unlawful harassment is substantiated; the Board will take immediate steps to end the harassment. Individuals who are found to have engaged in unlawful harassment will be subject to appropriate disciplinary action.

For purposes of this policy, "County School System community" means students, administrators, teachers, staff, and all other school personnel, including Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

For purposes of this policy, "third parties" include, but are not limited to, guests and/or visitors on County School System property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the County School System community at school-related events/activities (whether on or off School property).

Prohibited disability harassment occurs when unwelcome physical, verbal, or nonverbal conduct is based upon an individual's disability and when:

- A. the conduct has the purpose or effect of interfering with the individual's or educational performance;
- B. creates an intimidating, hostile, or offense working and/or learning environment; or of
- C. interfering with one's ability to participate in or benefit from a class or an educational program or activity.

Such harassment may occur where conduct is directed at the characteristics of a person's disabling condition, such as negative comments about speech patterns, movement, physical impairments or defects/appearances, or the like. Such harassment may further occur where conduct is directed at or pertains to a person's genetic information.

Reporting Procedures

- A. In Each School Building—The building principal is the person responsible for receiving oral or written reports of disability harassment at the building level. Upon receipt of a report of student conduct, the principal must notify the Human Rights Officer promptly, and shall commence investigation of the complaint. No later than ten (10) school days of receiving the complaint, a written report will be forwarded to the Human Rights Officer and to the Superintendent.
- If the report alleges employee misconduct, the building principal must promptly notify the Human Rights Officer who will initiate, or direct, an investigation of the complaint. This investigation may conducted by school officials or third parties designated by the Superintendent. Within ten (10) school days of receiving the complaint, the investigating party shall provide a written status report to the Superintendent.
- Anytime the report is given to the building principal verbally, the principal shall reduce it to written form before the close of the next working day. If the complaint involves the building principal, the complaint shall be made directly to the Human Rights Officer.
- For school buildings/facilities which do not have a building principal, such as the transportation and maintenance departments, the Director of such building or facility will be the person responsible for receiving oral or written reports

of disability harassment or violence. All other provisions of the paragraph above apply to such situations, except that the term "Director" shall be substituted for the term "building principal".

—B. County-wide—The Board hereby designates its Title IX Coordinator as the Human Rights Officer to receive reports or complaints of Disability harassment from any individual, employee or victim of disability harassment and also from the building principals as outlined above. If the complaint involves the Human Rights Officer, the complaint or report shall be filed directly with the Superintendent, who shall then be responsible for the investigation and recommendation described in the Investigation and Recommendation section of this policy. The name of the Human Rights Officer, including a mailing address and telephone number, shall be conspicuously posted in the office of each school building and in other buildings to which employees of the Board are assigned to work.

—C. Submission of a complaint or report of disability harassment will not affect the future employment, grades, or work assignments of the person who submits the complaint or report.

—D. Use of formal reporting forms is not mandatory.

—E. All alleged incidents of harassment or violence observed by faculty, staff or other employees of the Board must report the incident to either the building principal or the Human Rights Officer within twenty-four (24) hours of observing the incident.

The Board's investigation of disability harassment complaints will be conducted with maximum effort to protect the confidentiality of all those involved in the complaint or investigative process and to facilitate prompt resolution of the complaint. School officials, may in their discretion, take immediate steps to protect individual privacy and safety pending resolution.

Investigation and Recommendation

The individual(s) designated by this policy to investigate, shall, upon receipt of a report or complaint alleging disability harassment, immediately will authorize an investigation. The investigation may be conducted by school officials or by a third party designated by the school officials if necessary. The investigating party shall provide a written report of the result of the investigation and a recommendation of discipline within ten (10) school days of receiving the complaint to the Superintendent and to the Human Rights Officer. If the Superintendent is the subject of the complaint, the report shall be submitted to the Human Rights Officer and to the President of the Board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

In determining whether alleged conduct constitutes disability harassment, consideration shall be given to the surrounding circumstances, the nature of the conduct involved, relationships between the parties involved, and the context in which the alleged incidents occurred.

The investigation must, at a minimum, consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and other who may have knowledge of the alleged incident(s) or circumstance(s) giving rise to the complaint. The investigation may also consist of any other methods, documents, and review of circumstances deemed pertinent by the investigator(s).

Confidentiality

Confidentiality of the filing of complaints, the identity of subject and witnesses of any complaint, and of any action taken as a result of such complaints is essential to the effectiveness of this policy. Only those individuals necessary for the investigation and resolution of the complaint shall be given information about it. Therefore, the right of confidentiality of complainants, subject, witnesses, and investigators will be vigorously protected and violations of such confidentiality

~~may, itself, be grounds for disciplinary action.~~

Results of the Investigation

~~The result of the investigation of each complaint filed under these procedures will be reported in writing to the complainant and his/her legal guardian by the Superintendent, or, if the Superintendent is the subject of the complaint, by the President of the Board.~~

Discipline and Other Actions

~~In determining the appropriate response and/or punishment, the appropriate school official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incident occurred.~~

~~—A. Upon receipt of a recommendation that the complaint is valid, the appropriate school official shall take action appropriate to the status of the offender (student, staff, or public guest). Such action for students may include all options listed in Policy 5600. Actions for staff may include, but not be limited to, warning, suspension, termination revocation of license, notification of law enforcement, and/or human services. Actions for public guests may include but not be limited to removal from school property and school sponsored functions, notification of law enforcement and/or human services.~~

~~—B. The appropriate school official shall also initiate such other action as is appropriate to ease tensions and affirm the values of respect and understanding in accordance with this policy.~~

~~—C. The Superintendent shall immediately file a report with the West Virginia Department of Education of all reports of harassment when an investigation shows that harassment did occur and all actions taken in response to the incident. Nothing in this policy shall prohibit contacting law enforcement or other personnel, including the Human Rights Commission, regarding the actions of any party subject to a complaint.~~

Reprisal

~~The Board will discipline, as appropriate, any individual who retaliates against any person who reports allegations of disability harassment, or any person who cooperates, testifies, assists, or participates in any disability harassment investigation, proceeding, or hearing. "Retaliation" includes, but is not limited to, any form of retaliation or intimidation, reprisal, coercion, provocation, or harassment. The appropriate school official will also discipline, as appropriate, any person who falsely reports disability harassment.~~

Non-Harassment

~~The Board recognizes that not all reports of allegations of disability harassment will result in findings that such an incident has occurred. However, the Board encourages all persons who believe that they are a victim of such harassment to come forward and affirms its policy that no adverse action will be taken upon the filing of a complaint under this policy, unless it is shown, through investigation, that the complaint is patently false.~~

Right to Alternative Complaint Procedures

~~These procedures do not deny the right of any individual to pursue other avenues of recourse which may include the filing of charges with the West Virginia Human Rights Commission, filing an employee grievance under WV Code 18-29-~~

~~1, et seq., filing a citizen's appeal under West Virginia Board of Education policy 7211, filing a Title IX grievance under the appropriate procedures, filing charges with the Federal Equal Employment Opportunity Commission, or initiating civil or criminal action under State and/or Federal law.~~

~~Dissemination of the Policy~~

~~This policy or a summary shall be conspicuously posted throughout each school or facility of the Board in areas accessible to students and staff members.~~

~~This policy shall appear in the Staff Handbooks and, if no handbook is available, a copy shall be distributed to all students, faculty, and staff.~~

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~~The Board policy shall be reviewed at least bi-annually to assure compliance with State and Federal law and with State Board of Education policy.~~

~~Groups and person utilizing school properties for curricular and extra-curricular activities shall be provided a copy of this policy prior to the use of any Board facility. Failure to comply with this policy by a non-student group will result in the immediate forfeiture of the group's use of the school properties.~~

~~Implementation and Education~~

~~The Human Rights Officer shall develop a program designed to raise the awareness of the different types of harassment, how it manifests itself, and its emotional, educational and legal consequences.~~

~~The Human Rights Officer shall present written and verbal information to all faculty, staff and students at least once annually. Dissemination of written and verbal information may be made by a designee(s) of the Human Rights Officer as appropriate, and such presentation must be age-appropriate for students K-4, 5-8, and 9-12.~~

~~WV State Board policy 4373~~